Dr Shafie bin Abu Bakar lwn Pegawai Pengurus Pilihan Raya No 26 Bangi — Mohd Zakri bin Hj Hussin & Lain-lain (No 1)

MAHKAMAH TINGGI (SHAH ALAM) — PETISYEN PILIHAN RAYA NO 1 TAHUN 2004
VT SINGHAM H
29 JUN 2004

Pilihan raya — Petisyen — Serahan — Permohonan untuk melanjutkan masa untuk notis untuk serahan petisyen — Sama ada permohonan dibenarkan — Peraturan Pilihan Raya 1954 k 15

Ini adalah permohonan oleh pempetisyen untuk lanjutan masa untuk menyampaikan notis serahan petisyen kepada responden pertama. Menurut pempetisyen, dia tidak berupaya untuk menyampaikan notis tersebut lebih awal disebabkan oleh kelewatan bahagian daftaran Mahkamah Tinggi dalam mengembalikan petisyen yang dimeterai.

Diputuskan, menolak permohoan tersebut:

(1) Akta Kesalahan Pilihan Raya 1954 ('Akta') dan Kaedah-Kaedah Petisyen Pilihan Raya 1954 ('Kaedah tersebut') tidak memberikan apa-apa budi bicara atau kuasa kepada mahkamah untuk melanjutkan masa untuk menyampaikan notis serahan petisyen di luar jangka masa seperti yang diperuntukkan di bawah k 15 Kaedah tersebut (lihat perenggan 5).

(2) Peruntukkan k 15 Kaedah tersebut adalah mandatori dan mahkamah tidak boleh campur tangan dengan yang berkenaan melalui pelanjutan masa untuk menyampaikan notis serahan petisyen. Seksyen 42(2) Akta tidak boleh digunakan sebagai alasan untuk menggunakan pakai A 3 k 5 Kaedah-kaedah Mahkamah Tinggi ('KMT') untuk melanjutkan masa (lihat perenggan 5).

(3) Tambahan pula, Parlimen telah, melalui s 35A Akta, dengan jelasnya menghadkan masa untuk perbicaraan setiap petisyen pilihan raya ditamatkan tidak lebih daripada enam bulan daripada tarikh serahan petisyen pilihan raya. Maka dengan itu, niat Parlimen tidak harus dikecewakan dengan campur tangan mahkamah (lihat perenggan 7).

[English summary

This was an application by the petitioner for an extension of time to serve the notice of the presentation of the petition on the first respondent. According to the petitioner, he was not able to serve the said notice earlier due to the delay by the High Court registry in returning the sealed petition.

Held, dismissing the application:

(1) The Election Offences Act 1954 ('the Act') and the Election Petition Rules 1954 ('the Rules') did not give any discretion or power to the court to extend the time for serving the notice of the presentation of the petition outside the time frame stipulated in r 15 of the Rules (see para 5).

(2) The provisions in r 15 of the Rules were mandatory and the court should not interfere with the same by extending the time for serving the notice of the presentation of the petition. Section 42(2) of the Act cannot be relied on as a ground to use O 3 r 5 of the Rules of the High Court 1980 ('RHC') to extend the time (see para 5).

(3) Further, Parliament had, by virtue of s 35A of the Act, clearly limited the time frame for the trial of every election petition to be completed not later than six months from the date of the presentation of the election petition. Accordingly, the intent and spirit of Parliament must not be frustrated by the court's interference (see para 7).

Nota-nota

Untuk kes-kes mengenai kegagalan menyampai notis petisyen dalam tempoh masa yang tetap, lihat 6 *Mallal's Digest* (4th Ed, 2004 Reissue) perenggan 1917

Untuk kes-kes mengenai penyampaian petisyen, lihat 6 *Mallal's Digest* (4th Ed, 2004 Reissue) perenggan 1935

Kes-kes yang dirujuk

Petisyen Pilihan Raya No 26-l-2004

Abdul Rahim Ponniah bin Abdullah lwn Kulim Intensive Driving Centre Sdn Bhd [2000] 6 MLJ 584 (dirujuk)

Barber v Palmer (1881) 8 QBD 9 (dirujuk)

Bong Geok Beng v Ahmad Nordin bin Mohamed Amin [1980] 1 MLJ 167 (dirujuk)

Chong Thain Vun v Watson & Anor [1968] 1 MLJ 65 (dirujuk)

Daud bin Wan Jusoh v Mohamed bin HJ Ali & Anor [1988] 2 MLJ 384 (dirujuk)

Devan Nair v Yong Kuan Teik [1967] 1 MLJ 261 (dirujuk)

Dr Lee Chong Meng v Abdul Rahman bin Haji Abdullah, Returning Officer, & Ors [2000] 3 MLJ 219 (dirujuk)

Hamid Datun lwn Majanggil & Anor; Richard E Yap lwn Tun Datu Mustapha bin Data Harun [1968] 1 MLJ 65 (dirujuk)

Kredin Sdn Bhd v OCBC Bank (M) Bhd [1998] 3 MLJ 78 (dirujuk)

Lachhman Das Arora v Ganeshi Lal & Ors [1999] 4 LRI 815 (dirujuk)

Lee Wah Bank Limitted lwn National Union of Bank Employees [1981] 1 MLJ 169 (dirujuk)

Majlis Peguam lwn Tan Sri Dato' Mohamed Yusof bin Mohamed [1997] 2 MLJ 271 (dirujuk)

Mortgage Corporation Ltd lwn Sandoes & Ors Times LR 1996 751 (dirujuk)

Narinder Singh Jaswant Singh lwn Ketua Polis Daerah Georgetown [1997] 1 CLJ Supp 592 (dirujuk)

A *Patau Rubis v Patrick Uren & Anor* [1984] 1 CLJ 51 (dirujuk)
Punjab Co-operative Bank Ltd Amritsar v CIT Lahore 67 IA 464; AIR 1940 PC 230; (1941) 1 Mad LJ 130 (dirujuk)
Richard E Yap lwn Tun Datu Mustapha bin Data Harun [1968] 1 MLJ 65
Saunders lwn Pawley (1885) 14 QBD 234 (dirujuk)
B *Soh Keng Hiam lwn American International Assurance Co Ltd* [1996] 1 MLJ 191 (dirujuk)
Tengku Korish v Mohamed bin Jusoh & Anor [1970] 1 MLJ 6 (dirujuk)
Thiruchevasegaram a/l Manickavasegar lwn Mahadevi a/p Nadchatiram [1998] 4 MLJ 297 (dirujuk)
Zulkarnaini bin Mohamed Noor v Syed Omar bin Mohamed [1979] MLJ 143 (dirujuk)

C

Perundangan yang dirujuk

Akta Interpretasi 1948 dan 1967 ss 45, 109
Akta Kesalahan Pilihan Raya 1954 ss 33, 35A, 42(2)
Kaedah-Kaedah Mahkamah Tinggi 1980 A 3 k 5, A 92 k 4,
D Kaedah-Kaedah Petisyen Pilihan Raya 1954 kk 15, (1)

Azhar Azizan bin Harun (Kaushalya Rajathurai bersamanya) (Shafee & Co) bagi pihak responden ketiga
Azizah bte Haji Nawawi (Asmah bt Ibrahim bersamanya) (Jabatan Peguam Negara
E *Malaysia) bagi pihak responden pertama dan kedua.*
Mohamed Hanipa bin Maidin (Ahmad Lufti bin Awang bersamanya) (MK Othman & Co) bagi pihak pempetisyen.

VT Singham H:

F **[1]** Permohonan pempetisyen melalui notis usul (*Lampiran 8*) adalah supaya tempoh penyampaian notis petisyen pilihan raya ke atas *responden pertama* dilanjutkan selama 15 hari mulai tarikh perintah ini.

[2] Mahkamah ini berpendapat bahawa *Kaedah-Kaedah Petisyen Pilihan* Raya *1954* adalah satu *kaedah khas* dan tempoh masa yang ditetapkan harus dipatuhi
G seperti diperuntukkan dalam Akta Kesalahan Pilihan Raya 1954 dan Kaedah-Kaedah Petisyen Pilihan Raya 1954.

[3] Rujuk kes-kes:

(1) *Devan Nair v Yong Kuan Teik* [1967] 1 MLJ 261;

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(2) *Chong Thain Vun v Watson & Anor* [1968] 1 MLJ 65;

(3) *Tengku Korish v Mohamed bin Jusoh & Anor* [1970] 1 MLJ 6;

(4) *Dr Lee Chong Meng v Abdul Rahman bin Haji Abdullah Returning Officer & Ors* [2000] 3 MLJ 219

I

[4] Kes-kes yang dirujuk seperti dalam senarai autoriti peguam pempetisyen (Lampiran 24) iaitu:

(i) *Thiruchevasegaram a/l Manickavasegar lwn Mahadevi a/p Nadchatiram* [1998] 4 MLJ 297;

(ii) *Saunders lwn Pawley* (1885) 14 QBD 234;

(iii) *Mortgage Corporation Ltd lwn Sandoes & Ors* Times LR 1996 751;

(iv) *Abdul Rahim Ponniah bin Abdullah lwn Kulim Intensive Driving Centre Sdn Bhd* [2000] 6 MLJ 584; dan

(v) *Soh Keng Hiam lwn American International Assurance Co Ltd* [1996] 1 MLJ 191

untuk menyokong permohonan pempetisyen (*Lampiran 8*) tidak dapat dipakai dan harus dibezakan. Kes-kes tersebut adalah tentang tidak mematuhi kaedah-kaedah dalam Kaedah-Kaedah Mahkamah Tinggi (KMT) 1980. Oleh itu, A 3 k 5 KMT 1980 dipakai dan dipertimbangkan oleh mahkamah-mahkamah lain *dalam kes-kes tersebut*. Seterusnya dalam keadaan sedemikian, A 92 k 4 KMT 1980 juga tidak boleh membantu pempetisyen.

[5] Mahkamah ini juga berpendapat bahawa tidak ada sebarang *peruntukan sama ada di Akta* Kesalahan Pilihan Raya 1954 atau di Kaedah-Kaedah Petisyen Pilihan Raya 1954 yang memberi *budi bicara* atau kuasa kepada mahkamah untuk melanjutkan tempoh masa seperti yang dipohon oleh pempetisyen untuk menyampaikan notis petisyen pilihan raya dan/atau petisyen pilihan raya kepada responden pertama *di luar tempoh masa yang ditetapkan* di bawah *k 15* Kaedah-Kaedah Petisyen Pilihan Raya 1954. Seksyen 42(2) Akta Kesalahan Pilihan Raya 1954 tersebut yang dirujuk oleh peguam pempetisyen tidak dapat dipakai untuk keadaan dan kepada permohonan seperti notis usul (*Lampiran 8*). Oleh kerana *k 15* Kaedah-kaedah Petisyen Pilihan Raya 1954 *didapati adalah mandatori seperti yang diakui oleh peguam pempetisyen*, mahkamah ini tidak boleh *masuk campur* terhadap peruntukan kaedah tersebut dengan memberi lanjutan tempoh masa. Sebaliknya dan sekiranya mahkamah guna pakai *s 42(2) Akta Kesalahan Pilihan Raya 1954* dibaca bersama dengan *A 3 k 5 Kaedah-Kaedah Mahkamah Tinggi 1980* seperti yang dihujah oleh peguam pempetisyen dan sekiranya dibandingkan dengan peruntukan *di bawah k 15 Kaedah-Kaedah Petisyen Pilihan Raya 1954*, maka memang wujud *satu konflik* (conflict) dan mahkamah ini tidak dapat membenarkan sebarang konflik terhadap *peruntukan khas* di mana terkandung dalam Kaedah-Kaedah Petisyen Pilihan Raya 1954 yang juga terdapat dalam Akta Kesalahan Pilihan Raya 1954. Dalam kes *Lee Wah Bank Ltd lwn National Union of Bank Employees* [1981] 1 MLJ 169 Hashim Yeop A Sani H (pada masa itu) berkata:

> Since the Industrial Court is a *creature of the Industrial Relations Act 1967 its powers must be discovered only from the four corners of the Act* expressly or by necessary implication.

[6] Alasan yang diberi oleh pemohon/pempetisyen dalam afidavit sokongan (*Lampiran 8A*) untuk notis usul tersebut, iaitu di antara alasan-alasan yang lain adalah bahawa pempetisyen tidak dapat melaksanakan penyerahan lebih awal

kerana salinan termeterai petisyen hanya dikembalikan oleh pejabat pendaftaran Mahkamah Tinggi Shah Alam pada 10 Mei 2004 walaupun ianya telah difailkan pada 30 April 2004 dan peguam pempetisyen dimaklumkan oleh kakitangan mahkamah di bahagian pendaftaran apabila peguam pergi pada 5, 6, dan 7 Mei 2004 untuk mendapatkan salinan meterai petisyen tersebut bahawa petisyen masih tidak ditandatangani kerana timbalan pendaftar yang bertanggungjawab masih bercuti. Mahkamah ini mendapati bahawa alasan tersebut memang mendorong satu keadaan supaya satu interpretasi seperti di hujah oleh peguam pempetisyen diberi kepada Akta Kesalahan Pilihan Raya 1954 dan Kaedah-Kaedah Petisyen Pilihan Raya. (*It is tempting to interpret the Election Offences Act 1954 and the Election Petition Rules 1954 in the way as submitted by learned counsel for the petitioner on the grounds as raised in the affidavit*) (*Lampiran 8A*), tetapi dorongan itu harus diketepikan, (*but that temptation must be resisted*) kerana ia akan menimbulkan suatu pertelagahan dengan badan perundangan (*loggerheads with the legislature*). Rujuk kes-kes:

(1) *Lachman Dass Arora v Ganeshi Lal & Ors* [1999] 4 LRI 815;

(2) *Narinder Singh Jaswant Singh lwn Ketua Polis Daerah Georgetown* [1997] 1 CLJ Supp 592

[7] Dalam kes ini, mahkamah ini berpendapat bahawa kecuali ia dicatat secara jelas dalam Kaedah-kaedah Petisyen Pilihan Raya 1954 (*unless it is impressed by very clear language in the Election Petition Rules 1954*), mahkamah ini tidak boleh menganggap bahawa Parlimen ingin atau berhasrat memberi budi bicara kepada mahkamah ini untuk melanjutkan tempoh masa (*this court cannot assume that Parliament intended to give this court the discretion to extend time*) seperti yang dicadangkan oleh peguam pempetisyen. Mahkamah ini harus meneliti dan menimbang tujuan dan semangat Parlimen (*the intent and spirit of Parliament*) walaupun satu pihak yang terkilan (*an aggrieved party*) seperti pempetisyen tidak mempunyai sebarang remedi, di mana Parlimen telah *mengehadkan tempoh masa untuk menyelesaikan perbicaraan kes pilihan raya dalam tempoh enam bulan dari tarikh petisyen* di kemukakan di mahkamah (*has limited the time frame for the hearing of the Election Petition to be completed not later than six months from the date of the presentation of the petition*). (Rujuk kepada *s 35A Akta Kesalahan Pilihan Raya 1954*) dan ini bermakna bahawa tujuan dan semangat Parlimen tidak harus dikecewakan dengan campur tangan oleh mahkamah (*the intent and spirit of Parliament must not be frustrated by the court's interference*). Pentafsiran makna sesuatu penyataan (*Interpretation of the meaning of an expression*) dalam satu Akta Parlimen tidak boleh dianalisis hanya dan dalam keadaan berasingan tetapi harus ditafsirkan dalam konteks keseluruhannya (*cannot be interpreted in isolation but has to be interpreted in the context of the Act as a whole*). (Rujuk kes (i) *Zulkarnaini bin Mohamed Noor v Syed Omar bin Mohamed* [1979] MLJ 143, dan (ii) *Daud bin Wan Jusoh v Mohamed bin HJ Ali & Anor* [1988] 2 MLJ 384).

[8] Penggubalan *(construction of)* Kaedah-kaedah Petisyen Pilihan Raya 1954 seperti yang dicadangkan oleh peguam pempetisyen untuk sesuaikan *permohonan pempetisyen akan membuka peluang* (*open the floodgates*) kepada satu pihak *iaitu seorang pempetisyen* untuk memohon lanjutan masa dalam setiap keadaan dan di atas sebab tidak sengaja, ketinggalan atau bukan kesilapan pempetisyen atau responden (*in every instance of some inadvertence, omission or no fault of the petitioner or respondent*). Dalam kes *Bong Geok Beng v Ahmad Nordin bin Mohamed Amin* [1980] 1 MLJ 167, Wan Yahya H (pada masa itu) berkata:

> To allow this infringement of mandatory procedure is tantamount to opening a new horizon for 'trial and error' litigation which can go on ad infmitum. For peaceful and speedy determination of an election petition the rules have to be strictly adhered to and obeyed.

[9] Malangnya, mahkamah ini berpendapat bahawa Akta Kesalahan Pilihan Raya 1954 atau Kaedah-Kaedah Petisyen Pilihan Raya 1954 tidak menetapkan peruntukan *cara jelas* (*expressly*) untuk membenarkan lanjutan masa seperti yang dipohon oleh pempetisyen. Oleh itu, mahkamah ini mendapati bahawa Parlimen dengan sengaja tidak mencatatkan dalam Akta Kesalahan Pilihan Raya 1954 atau di Kaedah-kaedah Petisyen Pilihan Raya 1954 peruntukan untuk melanjutkan tempoh masa seperti yang terkandung dalam A 3 k 5 Kaedah-kaedah Mahkamah Tinggi 1980 walaupun terdapat anamoli (*it should be taken that Parliament had abstained deliberately despite the anomaly*), sejak awal kes *Devan Nair v Yong Kuan Teik* [1967] 1 MLJ 261 PC dan kes-kes lain yang diputuskan kemudian dan walaupun terdapat pindaan baru, Parlimen masih tidak mengatasi anomoli ini.

[10] Mahkamah ini tidak dapat terima hujah-hujah peguam pempetisyen bahawa tujuan Parlimen adalah untuk memberi laluan berkenaan kemungkiran tentang keperluan k 15(1) Kaedah-Kaedah Petisyen Pilihan Raya 1954 dan pada masa yang sama tidak menyatakan cara jelas tujuan ini dalam Kaedah-kaedah Petisyen Pilihan Raya 1954. Bidang kuasa khas hakim pilihan raya telah dibuat secara jelas dengan memperkenalkan s 33 Akta Kesalahan Pilihan Raya 1954. Kaedah 15 adalah mandatori seperti yang diakui oleh peguam pempetisyen dan sekiranya lanjutan tempoh masa dibenarkan ia akan tidak berkonsisten dengan tujuan Parlimen yang jelas. Mahkamah ini menerima pakai maksud mudah (*purposive approach*) untuk memberi tafsiran Akta Kesalahan Pilihan Raya 1954 dan Kaedah-kaedah Petisyen Pilihan Raya 1954. (*This court is unable to accept the contention of learned counsel for the petitioner that the intent of Parliament was to give way in respect of breaches of the requirement of r 15 (1) of the Election Petition Rules 1954 and while at the same time did not expressly stipulate this intent in the rules of the Election Petition Rules 1954. The exclusive jurisdiction of the Election Judge was made expressly by the introduction of s 33 of the Election Offences Act 1954. Rule 15 is mandatory as conceded by learned counsel for the petitioner and to grant the extension of time would be inconsistent with the express intend of Parliament. This court accepts the purposive approach of construing the Election Offences Act 1954 and the Election*

Petition Rules, 1954). Dalam kes *Patau Rubis v Patrick Uren & Anor* [1984] 1 CLJ 51 Charles Ho H berkata:

> The jurisdiction of the Court to hear election petition is a creature of statute not only in this country but also in countries like India and England. Judges who heard election petitions had described this jurisdiction as a special jurisdiction or a peculiar jurisdiction. In exercising this special jurisdiction the court has the inherent power to dismiss or strike out petitions which are defective. (See *Devan Nair v Yong Kuan Teik* [1967] 1 MLJ 261). Election petitions were considered to be defective where there was non-compliance with the mandatory requirements of the Election Offences Act and the Election Petition Rules in the drafting and presentation of the petitions. Election judges in this country, however, seemed to have different views as to the mandatory nature of some of the provisions in the Act and Rules. Perhaps if the Act provides for an appeal or a reference in respect of interlocutory decisions to the Federal Court a lot of these inconsistencies may be resolved. Judges, however, seemed to agree that the statutory requirements of election law must be strictly observed. Touching on the jurisdiction of the court and the right to petition his Lordship Raja Azlan Shah J (as His Highness then was) in the case of *Tengku Korish v Mohamed bin Jusoh* [1970] 1 MLJ 6 at p 7 said:
>
> > What 'right' does the Election Offences Act 1954, confer, using the word 'right' in its broad sense? In my judgment, the right conferred by that Act is a special kind of right unknown to the common law or equity, and the court which administers it possesses a special kind of jurisdiction (see *Theberge v Laudry* (4*), Goonesinha v Hon CI de Kretsor* (5) or what is said in *Arzu* (6) as a peculiar jurisdiction). It is not a civil right but a creature of statute or special law and must be subject to the limitations imposed by it (see *Ponnuswami v Returning Officer, Nammakal Constituency & Ors* (7).

[11] Dalam kes *Majlis Peguam Iwn Tan Sri Dato' Mohamed Yusof bin Mohamed* [1997] 2 MLJ 271 di ms 291 YA Mohd Azmi HMP berkata:

> *In interpreting any statutory provision, no words used by Parliament should be construed as superfluous and of no effect whatsoever simply to enable the courts to rewrite the legislative plain language.* In our view, the doctrine of absurdity and redundancy in legislative words must be applied with the utmost caution, and it must not be applied when an explanation can in fact be found for such words. Indeed, in interpreting statutes, the courts must in appropriate cases, even take heed of punctuations — see *Hanlon v The Law Society* [1981] AC 124 at pp 197–198 and *Dato' Mohd Hashim Shamsudain v The Attorney General, Hongkong* [1986] 2 MLJ 112 (FC). We therefore hold that merely because para 8 of the Schedule to the 1964 Act has conferred a general power of abridgement, it doses not follow that Parliament is precluded from conferring express power of abridgement in any particular legislative provision. Similarly, it does not mean that Parliament cannot prohibit such general power from being invoked either expressly or by necessary implication. *In this case, we are more than satisfied that the prescribed time in s 15(5) is intended to be mandatory and as such, the court ought not to exercise its general power under para 8 of the 1964 Act to abridge the period of posting.* The general powers in the Schedule are discretionary, and like any other discretions, they must be exercised in a way which in all the circumstances

best reflect the requirement of justice which for the purpose of ss 15(5) and 17 requires the court to take into account not only the interest of the petitioner and the Bar Council and Bar Committee but also the interest of the general public for whose benefit the provision of s 17 has been specially enacted. (Penekanan oleh mahkamah ini).

[12] Dalam kes *Majlis Peguam lwn Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271 di ms 296 Edgar Joseph Jr HMP berkata:

It should be recognized that para 8 of the Schedule is a general measure and speaks about powers of the High Court to enlarge or abridge time prescribed by any written law for the doing of any act or taking any proceeding, *whereas s 15(5) is specific measure with no power given to the court to enlarge or abridge time, which, in my view, for the reasons stated, is mandatory and therefore obligatory.* There is thus an apparent conflict between these two measures, and in such a situation, it is a well-known rule of construction that the specific measure overrides the general measure, (see, eg *Lee Lian & Ors v PP* [1956] MLJ 191 at p 193, per Thomson J). (Penekanan oleh Mahkamah ini).

[13] Dalam kes *Majlis Peguam & Anor lwn Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271 di ms 298 Edgar Joseph Jr HMP berkata:

... there is a written law, to wit, s 15(5) of the Act, wherein the provision as to time is obligatory, which thus prohibits the High Court from abridging the time limited therein, by resort to its general powers under para 8 of the Schedule or otherwise. In other words, any attempt to abridge the time limited under s 15(5) of the Act, by resort to para 8 of the Schedule, would be in direct contradiction of the provisions of the proviso to s 25(2) of the Courts of Judicature Act 1964, and therefore not in accordance with written law.

With profound respect, therefore, in the present case, I regret that I am unable to agree with the learned judge in the High Court, that it was open to him to exercise his powers under para 8 of the Schedule to abridge the time limited *under s 15(5) of the Act.*

Before departing from the present case, there are two matters upon which I should like to make some observations regarding the general powers of the High Court under para 8 of the Schedule.

Having held that the provision as to time in s 15(5) of the Act is mandatory and therefore obligatory since there is no provision therein giving power to the High Court to abridge such time, and that resort to the general power to abridge such time under para 8 of the Schedule would be in direct contradiction of the provisions of the proviso to s 25(2) of the Courts of Judicature Act 1964, the question then arises: in what circumstances would resort to para 8 of the Schedule be justified?

It is true that on general principle, where a statute regulates the exercise of a right or power, or the use of a prescribed procedure, express reference to time being made, there is a marked inclination on the part of the court to regard the relevant provision as obligatory unless a power of extending or abridging the time is given to the court. (Penekanan oleh Mahkamah ini)

[14] In *Barber v Palmer* (1881) 8 QBD 9 which was referred to in that case, Grove J opined that:

> The provisions with respect to time are always obligatory, *ie* mandatory unless a power of extending time is given to the Courts

[15] Dalam kes *Punjab Co-operative Bank Ltd Amritsar v CIT Lahore* 67 IA 464; AIR 1940 PC 230; (1941) 1 Mad LJ 130 Viscount Maugham berkata:

> It is a well-settled general rule that an *absolute enactment* must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

[16] Di atas tafsiran yang sebenarnya bagi k 15 Kaedah-Kaedah Petisyen Pilihan Raya 1954 dan s 42 Akta Kesalahan Pilihan Raya 1954, mahkamah ini mendapati bahawa mahkamah tidak boleh membawa masuk atau meminda (import or transplant) budi bicara untuk membenarkan lanjutan tempoh masa apabila mengambil kira semangat dan tujuan Parlimen seperti dinyatakan di atas dan mahkamah ini tidak boleh memakai tafsiran yang tegang (strain) hanya dengan tujuan untuk memberi laluan kepada seorang yang terkilan. (*Upon the true construction of r 15 of the Election Petition Rules 1954 and s 42 of the Election Offences 1954, this court is of the view that this court cannot import or transplant into the Election Offences Act 1954 or Election Rules 1954 a discretion to grant the extension of time by reason of the spirit and intent of Parliament aforesaid and this court cannot apply strained construction merely to accommodate an aggrieved party*. (Lihat *Kredin Sdn Bhd v OCBC Bank (M) Bhd* [1998] 3 MLJ 78). (Penekanan oleh mahkamah ini).

[17] Mahkamah ini juga berpendapat bahawa perintah bertarikh 27 Mei 2004 yang diberi oleh YA Dato' Wan Adnan @ Addinan bin Muhamad, hakim pilihan raya dalam kes (lihat *Petisyen Pilihan Raya No 26-1-2004*), *Mahkamah Tinggi Ipoh* yang membenarkan tempoh masa untuk menyampaikan Notis Petisyen Pilihan Raya dan Petisyen Pilihan Raya ke atas responden pertama selama 15 hari daripada tarikh perintah itu dan dirujuk oleh peguam pempetisyen harus dibezakan. Perintah tersebut dengan segala hormatnya tidak dapat diikuti oleh Mahkamah ini kerana perintah tersebut didengar secara ex parte dan tidak ada catatan mengenai sebarang bantahan daripada pihak penentang. Manakala kes di hadapan mahkamah ini, mahkamah ini berpeluang untuk mendengar hujah-hujah daripada semua pihak berkenaan undang-undang pilihan raya dan juga sama ada hakim pilihan raya mempunyai budi bicara untuk melanjutkan tempoh masa. Oleh itu, mahkamah ini dengan segala hormatnya tidak dapat mengikuti perintah dalam *Petisyen No 26-1-2004 tersebut*. Seterusnya, dalam kes *Chong Thain Vun v Watson & Anor; Hamid Datun lwn Majanggil & Anor; Richard E Yap lwn Tun Datu Mustapha bin Data Harun* [1968] 1 MLJ 65, Lee Hun Hoe H (pada masa itu) berkata:

> As to question of time the Ordinance and Rules are clear and unambiguous. There is therefore no question of *casus omissus* in the rules. The court should approach the matter with caution where it has been urged to construe any enactment in a manner which may result in the extension of any provision of any enactment. The court

should decline to interfere where a person is seeking its aid in order to relieve him against express statutory provisions which it considers to be mandatory.

Strict compliance with the rules is necessary as r 15 is mandatory.

It would be wrong to strain words to meet the justice of the present case, because it might make a precedent, and lead to dangerous consequences in other cases.

Unless there is express provision in the rules the court has no power to enlarge time.

It is of great importance that election petitions should be dealt with as early as possible and decisions made in the shortest possible time. The peculiar nature of the jurisdiction and public interest in the matter demand a final determination of the matter at an early date. Such matter concerns the rights and privileges of a legislative assembly, and whether that assembly assumes to decide such matter itself or to delegate determination to a tribunal established for that purpose, the matter is such that it calls for an early and final determination.

[18] Mahkamah juga telah menimbang *s 45 dan s 109 Akta Interpretasi 1948* iaitu, sama ada peruntukan di bawah kedua-dua seksyen ini dapat membantu pempetisyen dalam permohonan tersebut (Lampiran 8). Mahkamah ini berpendapat bahawa peruntukan di kedua-dua seksyen tersebut tidak dapat dipakai dalam keadaan dan di atas permohonan pempetisyen kerana *ss 45 dan 109* tersebut adalah dipakai hanya dan sekiranya mahkamah ini mempunyai kuasa untuk melanjutkan tempoh masa.

[19] Oleh yang demikian dan dalam keadaan tersebut di atas, permohonan pempetisyen (Lampiran 8) untuk membenarkan lanjutan tempoh masa tidak dapat ditimbangkan. Dengan itu, permohonan Notis Usul (Lampiran 8) ditolak dengan kos.

Permohonan ditolak.

Dilaporkan oleh Lim Lee Na